



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

January 5, 2009

Chris Tan  
GMSX LLC dba Gelateria Naia  
736 Alfred Nobel Drive  
Hercules, CA 94547

Dear Mr. Tan,

The Department has completed its evaluation of your petition for a temporary standard for gelato dated August 21, 2008. Pursuant to Food and Agricultural Code Section 36633, the temporary standard request was evaluated on the basis of all of the following:

- (1) Testimony submitted by all interested persons during the hearing conducted October 17, 2008 through December 15, 2008.
- (2) The health and safety conditions under which the proposed product will be processed and distributed.
- (3) Existing definitions and standards established for comparable products.

Testimony submitted by interested persons was in large majority (80%) against the petition. Opposition included individual manufacturers as well as trade associations representing large sectors of the frozen dessert industry both within California and nationally. A common objection was that the proposed standard is too restrictive, resembling a single product formulation rather than an inclusive standard of identity, and would result in exclusion of a large number of products currently marketed as gelato. Testimony suggested this would lead to hindered product innovation, economic hardship for many current manufacturers, and significant disruption of commerce. Collectively, testimony also did not indicate that significant consumer confusion exists concerning frozen products labeled as "gelato".

There was strong industry objection to the petition's proposed restriction on safe and suitable synthetic ingredients approved for use in foods, and the resulting mandatory use of an all-natural product formulation. The Department concurs that such a restriction is not science based and would be inappropriate for an industry-wide standard of identity. The voluntary use of "natural" or "all natural" product claims are more properly regulated as truth-in-labeling and consumer choice issues, and are adequately addressed by Title 21, Part 101 of the Code of Federal Regulations, and Section 32914 of the California Food and Agricultural Code.



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The health and safety conditions under which the proposed product would be processed and distributed would not differ from those required of existing milk products or frozen desserts already regulated by the Department. Thus, a separate standard of identity is not needed to ensure consumer safety or the protection of public health.

Regarding existing standards for comparable products, the Department finds the proposed temporary standard does not significantly differ from ice cream, frozen dairy dessert or frozen dessert as defined in the Food and Agricultural Code, or from ice cream, frozen custard or mellorine as defined in Title 21, Part 135 of the Code of Federal Regulations, to qualify it as a "new dairy product" or to warrant a separate standard of identity.

Section 32912 of the Food and Agricultural Code also allows any milk product or frozen dessert that is subject to a standard of identity to be specially formulated or processed to lower the content of its milk fat, alter its milk fat composition, or otherwise modify its nutrient profile, provided such products are labeled in accordance with applicable provisions of Title 21 of the Code of Federal Regulations.

Therefore, after careful consideration according to the criteria listed above, the Department pursuant to Sections 36633 and 36634 of the Food and Agricultural Code denies your petition for a temporary standard.

Should you have any questions please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Beam", followed by a horizontal line.

Dr. Stephen Beam, Chief  
Milk and Dairy Food Safety Branch

cc: Dr. Annette Whiteford, Director, AHFSS